

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 01-10373-RWZ

UNITED STATES OF AMERICA

v.

PAUL A. DECOLOGERO, *et al.*

MEMORANDUM OF DECISION

August 5, 2013

ZOBEL, D.J.

On July 11, 2013, I entered an order denying all of the then-pending motions in this case, including motions under 28 U.S.C. § 2255 by petitioners Paul A. DeCologero ("Paul A."), Paul J. DeCologero ("Paul J."), John P. DeCologero, Jr. ("John Jr."), and Derek Capozzi. I allowed a certificate of appealability only as to petitioners' Brady claims based on the discovery of certain previously undisclosed FBI reports.

Paul A., Paul J., and John Jr. have filed notices of appeal. Paul A. and John Jr. have filed motions for leave to proceed in forma pauperis on appeal; those motions are allowed, subject to the filing of appropriate financial affidavits.

Capozzi has not yet filed a notice of appeal.¹ He has, however, filed a motion seeking a transcript of his trial under 28 U.S.C. § 753(f). That motion is denied, because this court has already decided Capozzi's § 2255 motions. See Patrick v.

¹ The time to file a notice of appeal will not expire until September 9, 2013, sixty days after the dispositive order entered. See Rule 11(b), Rules Governing Section 2255 Proceedings; Fed. R. App. P. 4(a)(1)(B); Lopez-Nieves v. United States, 917 F.2d 645, 647 (1st Cir. 1990).

United States, 298 F. Supp. 2d 206, 214 (D. Mass. 2004) (whether petitioner should be provided with a transcript depends on whether the transcript is needed for the court to decide a pending § 2255 motion). To the extent Capozzi believes he needs a transcript of his trial in order to pursue an appeal, he should first file a notice of appeal and then seek authorization from the court of appeals to obtain a transcript at the government's expense. See 28 U.S.C. § 753(f).

Capozzi has also filed two other motions that he drafted before I issued the order deciding his § 2255 motions. These two new motions lack merit and are denied.

In conclusion: The motions by Paul A. and John Jr. (Docket ## 2101 and 2112) are ALLOWED, subject to the filing of appropriate financial affidavits. The motions by Capozzi (Docket # 2096, 2097, and 2110) are DENIED.

August 5, 2013

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE